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Deutsche Bank

"Kohlenberg, Kerstin" <Kerstin.Kohlenberg@zeit.de> May 13, 2009 2:03 PM
To: DEEPA
AW: Links to Articles

Hi Deepak,

oh yes, I read them and after that went to your scribt-page and read everything that is there.

What you discovered at Deutsche Bank in regards to almost 100percent loans and the connection to bonuses is exactly what apparently happened at Hypo Real Estate (only that they offered 160 percent commercial real estate loans which in German is actually against the law. I am researching that story right now) so I am a little familiar with the topic. I just did a story about Merkel and her advisers and how badly their bank-overview functions. (http://www.zeit.de/2009/15/DOS-Kanzleramt)

I believe what you discovered in a heartbeat. I think your demands for better risk management and a different incentive structure need more audience - and connected with that very case that you are presenting, it would make a big, big story. I write 8000 word features (kind of like a New York times Magazine Story) and I would very much write about you and the case you are making. There are a lot of people out there that demand change, but there is you who can show how rotten the system still is, and how the managers say one thing to the media and something else to people like you.

The fact that your letter was ccd to Angela Merkel makes it even more interesting, because I could confront her with it, and ask about her real interests in changing the system (like she said on the G20 summit)

So any clue when you will be back in New York?

Kerstin

-----Ursprüngliche Nachricht-----
Von: DEEPAK MOORJANI
Gesendet: Mi 13.05.2009 18:50
An: Kohlenberg, Kerstin
Betreff: Links to Articles

Hi Kerstin,

Have you read these articles? If so, I'd welcome your thoughts.

A.

B.

Deepak

On May 14, 2009, at 12:57 AM, Kohlenberg wrote:

> Deepak,
>
> That's really unfortunate. When so you come back to the States?
>
> Kerstin
>
> Am 13.05.2009 17:51 Uhr schrieb "DEEPAK MOORJANI" unter
>
> > Hi Kerstin,
> >
> > Unfortunately, I am stuck in Asia. Hearings are discontinuous, and I'm
> > not sure when the next hearing will be. The April hearing was public,
> > but most are closed hearings (including this Friday's hearing).
> >
> > I'll recommend that we "meet" via videoconference. It's the next-best
> > alternative and better than a phone call. Maybe even this weekend.
> >
> > Thanks,
> > Deepak
> >
> > On May 14, 2009, at 12:10 AM, Kohlenberg wrote:
> >
> > > Hi Deepak,
> > >
> > > Thanks again. Just two quick questions in order to plan my trip next

乙第四三号証 6-1

(2) Deepak Moorjani
02/08/2007 03:09 PM

To: Michael Cohrs/DMGIB/DMG UK/DeuBa@DBEMEA
cc:
Subject: Via Jun

Hi Michael,

Yes, I was. Bonus day turned into a bigger distraction than imagined. Apologies for the delay.

I've convinced the sponsor of a large JREIT to go private in an MBO transaction. It's fairly large transaction ($1.7-1.8 billion), and if necessary, I would like to get your advice if we hit any major hiccups. Currently, we do not have any major issues, but I wanted to introduce myself well in advance in the event that I need some advice.

Thank you.

Deepak Moorjani
Deutsche Securities Inc.

Sanno Park Tower | 2-11-1 Nagata-cho | Chiyoda-ku, Tokyo 100-6171
+813.5156.7403 t | +813.5156.6884 f | deepak.moorjani@db.com

Michael Cohrs/DMGIB/DMG UK/DeuBa@DBEMEA

(1) Michael Cohrs/DMGIB/DMG UK/DeuBa@DBEMEA
02/05/2007 10:54 PM

To Deepak Moorjani/db/dbcom@DBAPAC
cc
Subject

I think you were trying to reach me--how can I help?

satyagraha
September 29, 2008

PERSONAL AND CONFIDENTIAL

Mr. Michael Cohrs
Mr. David Hatt
Deutsche Bank Group
Sanno Park Tower, 2-11-1 Nagatacho
Chiyoda-ku, Tokyo 100-6171

Dear Messrs. Cohrs and Hatt,

I deliver this 就労請求 as my right and obligation to demand work under Japanese law.

(Note: "In Japan, you cannot actually be dismissed unless you agree that you are dismissed. If you are unfairly dismissed and want to legally challenge the dismissal, you must submit to your employer a refusal of the dismissal and demand to know why you are being dismissed in writing by the next day (e.g., send a fax or email the day you are illegally dismissed). Thereafter, continue to report to work asking for your job back. This is called shuro seikyu (reporting to work) and is a seriously respected aspect of Japanese culture.")

In an April 14, 2008 letter, I wrote to you, "In my estimation, we will announce at least $10-15 billion in write-downs related to our credit exposure in a twelve month period. For Deutsche Bank, the status quo is no longer acceptable, as these large losses have increased and will increase scrutiny into our performance. Stakeholders will likely call for greater accountability, especially relating to Deutsche Bank management. In recent media reports, I have criticism from stakeholders and the general public, and some interpret inadequate corporate governance structures and lax internal controls as contributory to our large write-downs. I believe that we should proactively address the issues relating to our inadequate corporate governance structures and lax internal controls, especially relating to (i) a lack of transparency and (ii) a system of asymmetric incentives and its concomitant lack of risk management and (iii) a perceived lack of independence at the supervisory board level."

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This letter represents my continuing attempt to improve the inadequate governance structures and lax internal controls within Deutsche Bank. As recently reported, "Deutsche Bank AG announced $3.6 billion of fresh writedowns on Thursday, taking its bill from the financial crisis beyond $11 billion and putting it among the top ten global casualties of the turmoil . . . His remarks on Thursday contrast with his bullish statements of the past. As late as November, Ackermann signalled he saw no further writedowns and stood by his 2008 pretax profit goal of 8.4 billion euros, a target that has since been quietly dropped." It may no longer be appropriate to say, "Strategically, our path is clear: we stay the course!"

In my opinion, the media has missed the real story. The media reports on a "subprime crisis" or a "credit crisis" as if our recent write-downs and losses are caused by external events. Our poor results are a "management debacle," a natural outcome of our actions and our failures to act. We took too much risk, failed to manage this risk, and broke too many laws and regulations. We have inadequate governance structures and lax internal controls, and there is a strong economic disconnect between management and shareholders. As Warren Buffett stated, "The banks exposed themselves too much, they took on too much risk . . . It's their fault. There's no need to blame anyone else."

The right questions for shareholders are (i) Do we have the right management team in place? and (ii) Do we have a system of checks and balances to align interests between managers and shareholders? I remain concerned about our weak performance under your leadership. Global Banking missed, perhaps significantly, its internal P&L targets in 2007. I understand Deutsche Securities Inc. already has large balance sheet losses in 2008, and we are not taking our full mark-to-market losses.

Background

As you know, I have an investment management background with more than ten years of private equity experience in the US. In this role, I have been responsible for overseeing governance issues for a number of portfolio companies, with a particular focus on aligning incentives between management teams and investors. I constructively raised explicit concerns in an April 12, 2007 letter to Michael Cohrs which also stated, "I have witnessed violations of Japanese securities laws. These violations are numerous and willful, and these violations may have triggered criminal liability." In part, this conclusion was based on a presentation by our legal department entitled, "Financial Instruments & Exchange Law ("FIEL"), March 16, 2007 Version." In this document, we were advised that criminal penalties were possible based on violations including false statements in internal control reports and market price manipulation.

I joined Deutsche Bank to build an investment business in 2006, and over time, I began to conclude that we had inadequate corporate governance structures and lax internal controls. While some of this commentary may have offended powerful interests, it is in our best interest to address these issues proactively. As Edward R. Murrow offered, "We must not confuse dissent with disloyalty."

Within Deutsche Bank, I have been surprised at the aggressive use of our balance sheet; our top-down culture seems to push lending at any cost. As an example, I did an economic analysis of our commercial real estate lending activities in Japan. This January 2007 email was distributed to several of my colleagues, and my conclusion was simple: our real estate lending activities in Japan did not make economic sense. As I stated, "We would generate more profits in the carry trade." Our uneconomic activity was not limited to a small pool of capital; we had approximately $1.5-$2.0 billion in exposure at the then-prevailing exchange rates. Given the illiquidity of these positions as well as the tight spreads, I did not believe that the risk inherent in this lending activity would make sense to a prudent investor.

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Our CRE business states that it is a securitization business. Based on my internal observations, we are essentially a balance sheet lender which forces shareholders to assume the risk of our aggressive lending. We have been wildly unsuccessful in securitizing our CRE loans, and in some cases, this is pre-ordained by our desire to underwrite loans on terms and conditions that prevent securitization. When a recent master lessee went bankrupt, I and my fellow shareholder were forced to assume the risk of this loan.

Our lack of risk management has also been disappointing; as you may know, the commercial real estate personnel did not know our lending positions until an internal report entitled "CRE Japan, Balance Sheet March 2007" was produced. To the best of my knowledge, this was the first compilation of our lending positions in more than six months. Prior to this report, our real estate lenders did not know what was on the balance sheet. Shareholders mights consider this reckless and willfully negligent behavior.

My letter to Michael Cohrs was intended to be *personal and confidential* based on our prior correspondence and our numerous mutual friends and former colleagues (John Sheldon, Steve Bannon, Scot Vorse, Matt Czajkowski and Jun Makihara). According to public reports, Mr. Hatt joined Deutsche Bank on May 7, 2007 as "Regional CEO and Chief Country Officer for Deutsche Bank Group in Japan, responsible for coordinating the Group's business activities." These reports indicate Mr. Hatt replaced John T. Macfarlane who resigned as President and CEO in December 2006.

You and your designees responded with an explicit retaliatory campaign based on allegations of non-performance; however, there is no record of non-performance allegations prior to my letter to Michael Cohrs. Despite my legal representation, you and your designees issued a termination notice on September 5, 2007 which has been rejected. Retaliation would be illegal under Japanese law and likely viewed as an abuse of power. Any retaliation may also demonstrate a knowing attempt to conceal violations of law.

FSA Situation

In April 2008, the Nikkei reported that "With the potentially far-reaching impact on the market, authorities are considering recommending administrative action against the brokerage [Deutsche Securities Inc.] under the Financial Instruments and Exchange Law." Bloomberg reports that "The securities watchdog started an investigation of Deutsche on Oct. 29, and the probe is not yet complete, commission spokesman Mitsuru Yoshimura said by phone in Tokyo today, declining to give further details."

In my April 12, 2007 letter to Michael Cohrs, I offered advice to deal with the FSA violations. I stated, "The violations that have been committed cannot be undone; however, DB should implement changes to remedy the situation . . . Given this, I would impose appropriate penalties for the violations that have occurred and begin an "open-door" policy with the FSA as a way to engender goodwill." Please note that an administrative action or a business improvement order by the FSA will likely have an adverse impact on our fiscal 2008 financial results. For instance, the SESC situation may have been a factor in our non-participation in the recent 116.5 billion yen ($1.1 billion) underwriting of mortgage-backed securities by Japan Housing Finance Agency.

Structure and Compensation

We need to engage the governance dialogue, especially as it relates to the issues of structure and compensation. Our growing losses will likely raise the ire of my fellow shareholders, and calls for increased transparency and accountability will grow. If we fail to act proactively, shareholders may seek to implement a stronger system of checks-and-balances. At UBS, activists are agitating for change, and "[T]hey [Arnold et al.] bring up a number of good points, especially pertaining to corporate governance. You can make the argument that inbreeding and the lack of oversight and clear independence, may, in part, have led to the current crisis."

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Excessive compensation is an increasingly important issue for shareholders, and management should take immediate responsibility for our credit risk failures and our regulatory risk failures. We publicly state, "Effective corporate governance in accordance with high international standards is a part of our identity. We ensure the responsible, value-driven management and control of Deutsche Bank through our system of corporate governance, which has four key elements: good relations with shareholders, effective cooperation between the Management Board and the Supervisory Board, a system of performance-related compensation for managers and employees, as well as transparent and early reporting.

Unfortunately, we seem to reward non-performance; a recent Financial Times article explained "It was also revealed that Deutsche paid €97.1m in 2007 to six members of its global executive committee, compared with €99.7m in 2006. The committee members include Deutsche's top investment bankers such as Anshu Jain, head of global markets, and Michael Cohrs, head of global banking." With authority comes responsibility. Given your non-performance, Michael Cohrs and David Hatt should demonstrate leadership by returning their fiscal 2007 and fiscal 2008 compensation to Deutsche Bank shareholders. Your failures have been publicly manifested in at least two respects: (i) credit risk failures and (ii) regulatory risk failures.

Please note that we have significant risk remaining on our balance sheets. "Deutsche saw its so-called Level 3 assets - those most difficult to value, where unobservable pricing inputs exist - remain flat at 6 percent of total assets, 88 billion euros ($137.1 billion)." S&P recently stated, "The outlook on Deutsche Bank remains negative . . . the bank's leveraged finance loans and loan commitments (including bonds and nonsponsor loans) remain the largest in the entire industry, with a carrying value (balance sheet value) of €30.2 billion as of March 31, 2008. There have been some encouraging signs in the leveraged loan market since April, but Deutsche Bank's progress in reducing exposures remains slow relative to peers."

A Possible Solution

In its current form, our company is run by managers for the benefit of these managers. Management needs to own the risk in order to align the interests with shareholders. Private equity provides one long-term solution to our moral hazard problem. We should purchase the investment banking business in a management buyout. This would solve the principal-agent problem, and shareholders who prefer stable earnings would no longer have exposure to the highly-variable earnings of the investment banking division. The internecine power struggles within DB demonstrate that there is little "synergy" between our various business. To ensure fairness, the MBO transaction should provide an equity election option for existing shareholders.

This MBO would align incentives; it would eliminate the system of asymmetric incentives which likely contributed to our large losses announced in the past twelve months. At DB, we have announced more than $11 billion of write-downs, and our financial performance continues to decline. Additionally, we have avoided taking further write-down by our use of creative accounting practices. Deutsche Bank has consummated and may still be pursuing sales of leveraged loans portfolios. The portfolio sales are reportedly made at face value; however, we have reportedly provided $3 to $4 - *at below-market rates* - for every $1 credit in financing. The accounting rules allow us to make these loan sales without recognizing additional write-downs, but these loan sales fail to remove most of the underlying credit risk. Our loan sales simply shift the risk to another part of the balance sheet.

Summary

I have not resigned despite your attempts to force my resignation, and I remain ready and available to return to work. As previously disclosed, I am an openly-declared union member who began a collective bargaining process in order to (i) reinstate my employment and (ii) discuss the inadequate governance structures and lax internal controls at Deutsche Bank. Neither David Hatt nor Michael Cohrs participated directly in the collective bargaining process. With the assistance of outside counsel, a statement of claim has been filed in Tokyo District Court for my reinstatement. I note that neither Michael Cohrs nor David Hatt appeared at the first hearing on March 21, 2008, the second hearing on May 20, 2008, the third hearing on July 1, 2008, nor the fourth hearing on September 12, 2008..

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We can do better, and we need to raise the corporate governance dialogue. Rather than retaliation, we should encourage people to report and remedy corporate misconduct. This is an essential part of risk management. We have made explicit promises to our investors and to the general public relating to our corporate governance. These are not merely stated ideals but explicit promises which have been filed with various regulatory bodies around the world. Within our firm, we have a moral responsibility to each other, and we have a fiduciary responsibility to our investors.

My hope is that we can begin an honest dialogue to improve our corporate governance and our internal controls. Sometimes, big problems can result from seemingly small problems, and it is in the best interests of our stakeholders that we address these issues. Please direct your written response to Yasushi Higashizawa of Kasumigaseki Sogo Law Offices at your earliest convenience.

Please join me in this conversation. Together, we can make a difference.

Sincerely,

Deepak Moorjani

東京都千代田区永田町２丁目１１番１号

cc: John Sweeney, AFL-CIO; Pierre Louette, Agence France-Presse; Tom Steyer, Farallon Capital Management, Warren Hellman, Hellman & Friendman (with attachments)

就労請求

EX-99.3 5 dex993.htm LETTER FROM RICHARD H. WALKER

Exhibit 99.3

Richard H. Walker
General Counsel

Deutsche Bank AG
Legal Department
60 Wall Street, MS NYC60-3601
New York, NY 10005

Tel 212-250-8200
Fax 212-797-4569

richard.h.walker@db.com

January 29, 2008

Mr. Gary C. Dunton
Chief Executive Officer and President
MBIA Inc.
113 King Street
Armonk, NY 10504

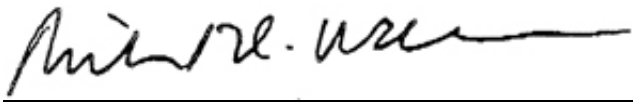
Dear Gary:

I have concluded that I should resign from MBIA's Board. I do so with great regret and only after very careful consideration of the interests of both MBIA and Deutsche Bank.

When I joined MBIA's Board in 2006, existing business relationships between MBIA and Deutsche Bank provided no basis to believe that I would be unable to give both institutions my full attention and undivided loyalty. Given the events of the past week, however, I am now in a position where I can no longer be confident that continuing to act on behalf of both institutions will not lead to the possibility of an appearance that I may have reason to favor one over the other on a matter of great importance to both. In these circumstances, my ability to continue to act on behalf of either institution may be constrained. Given the importance of restoring credibility in the marketplace, I would not want my role to become a distraction to ongoing efforts to achieve this goal.

I am proud to have been associated with MBIA, and I would have liked to continue serving on MBIA's Board. I leave the Board with great affection for all my fellow directors and with appreciation for their wisdom and dedication. I would also be remiss if I did not applaud the exceptional MBIA staff. I am confident that this top-flight staff, with the Board's support, will guide MBIA to future successes.

Sincerely,



Richard H. Walker

cc: Members of the Board of Directors

乙第五二号証の一

(2) Daiki Kajino/db/dbcom
2007/05/09 19:19

To Tomohiko Kimura/Tokyo/DBJapan/DeuBa@DBAPAC
cc
bcc
Subject Fw: Staff - Privileged & Confidential

Kimura-san

As we discussed in this morning, I explained the current situation to Murakami-san in HR.
After that, I arranged conference call with Sunil Madan and it is already fixed on tomorrow at 17:00 (Tokyo Time).
Murakami-san and I will have a conference call with him and ask him about our concerns.
If you need to join it, please let me know.

As to investigation of Frank's e-mail for Pipeline issue, I will start it as soon as I obtain Mitch's approval.

Regards,

☆☆☆☆☆☆☆☆☆☆☆☆☆☆☆
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☆☆☆☆☆☆☆☆☆☆☆☆☆☆☆

----- Forwarded by Daiki Kajino/db/dbcom on 2007/05/09 19:13 -----

(1) Mark Grolman/Sydney/DBAustralia/DeuBa@DBAPAC
2007/05/09 19:09

To "Dick Walker" <richard.h.walker@db.com>, janice.reznick@db.com, rachel.blanshard@db.com, jiana.leung@db.com, "Kiyoshi Murakami" <kiyoshi.murakami@db.com>, "Andrew Hume" <andrew.hume@db.com>, "Daiki Kajino" <daiki.kajino@db.com>, "Mr. Tomohiko (Tom) Kimura" <tomohiko.kimura@db.com>
cc
Subject Staff - Privileged & Confidential

PRIVILEGED & CONFIDENTIAL

Below are draft notes of the interview I had with Frank Forelle yesterday.

NEXT STEPS

I suggest for your condsideration that the next steps should be:

(a) we interview Sunil Madan. Tom Kimura has agreed to do that by telephone as soon as possible this week;

(b) when Deepak Moorjani returns to Tokyo from the US next week, we press him again to produce all evidence he has of any alleged violations or wrongdoing. In the two weeks since he was interviewed he has not produced any evidence;

(c) agree a letter to Mr Moorjani in response to his letter. I suggest that this letter be signed by David Hatt as President and CEO of DSI (the employer of Mr Moorjani). David Hatt has been briefed on this matter. I will draft the response letter for your review. Once agreed, that letter should be delivered to Mr Moorjani.

I also propose giving the draft notes of meeting to Frank Forelle to check for accuracy.